Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 24 APRIL 11, 1990 No. 15

This issue contains:

AVAILABILITY OF BOUND VOLUMES

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 90–22)

SUSPENSION OF CUSTOMS APPROVAL AND ACCREDITATION OF E.W. SAYBOLT & CO., AS A COMMERCIAL GAUGER AND LABORATORY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that pursuant to Part 151.13(k) of the Customs Regulations [19 CFR 151.13(k)], a written appeal against a proposal to revoke the commercial gauger and accredited laboratory approvals of E.W. Saybolt & Co., Inc., with prejudice, was filed with the Commissioner of Customs. The appeal has been considered and it has been decided to suspend the firm's commercial gauger and accredited laboratory approvals for a period of 60 days at the Customs District of Houston-Galveston. In addition, an amount of $300,000.00 has been accepted by the U.S. Customs Service in settlement of the Government's claim for monetary penalty for an alleged violation of 19 U.S.C. 1592.

With respect to the suspension of E.W. Saybolt & Co.'s commercial gauger and accredited laboratory approvals, the 60 day period specified above will commence on April 1, 1990 and end on May 30, 1990. It shall apply to the gauging and laboratory analysis of imported merchandise unladen within the Customs District of Houston/Galveston as specified in Part 101 of the Customs Regulations [19 CFR 101].

DATED: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202–566–2446).

Dated: March 23, 1990.

JOHN B. O'LOUGHLIN,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, March 29, 1990 (55 FR 11715)]

(T.D. 90–23)

FOREIGN CURRENCIES

Daily Rates for Countries Not on Quarterly List for February 1990

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: Monday, February 19, 1990.

Greece drachma:

February 1, 1990	$0.006341
February 2, 1990	.006341
February 5, 1990	.006351
February 6, 1990	.006406
February 7, 1990	.006406
February 8, 1990	.006369
February 9, 1990	.006327
February 12, 1990	.006337
February 13, 1990	.006329
February 14, 1990	.006337
February 15, 1990	.006297
February 16, 1990	.006274
February 20, 1990	.006337
February 21, 1990	.006345
February 22, 1990	.006329
February 23, 1990	.006301
February 26, 1990	.006275
February 27, 1990	.006266
February 28, 1990	.006254

Korea won:

February 1, 1990	$0.001450
February 2, 1990	.001449
February 5, 1990	.001448
February 6, 1990	.001448
February 7, 1990	.001448
February 8, 1990	.001447
February 9, 1990	.001446
February 12, 1990	.001446
February 13, 1990	.001446
February 14, 1990	.001444
February 15, 1990	.001444
February 16, 1990	.001443
February 20, 1990	.001443
February 21, 1990	.001443
February 22, 1990	.001442
February 23, 1990	.001440
February 26, 1990	.001439
February 27, 1990	.001437
February 28, 1990	.001435

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for February 1990 (continued):

Taiwan N.T. dollar:

February 1, 1990	$0.038377
February 2, 1990	.038344
February 5, 1990	.038307
February 6, 1990	.038340
February 7, 1990	.038333
February 8, 1990	.038286
February 9, 1990	.038270
February 12, 1990	.038285
February 13, 1990	.038283
February 14, 1990	.038283
February 15, 1990	.038298
February 16, 1990	.038289
February 20, 1990	.038274
February 21, 1990	.038252
February 22, 1990	N/A
February 23, 1990	.038263
February 26, 1990	.038237
February 27, 1990	.038237
February 28, 1990	.038239

(LIQ–03–01 S:NISD CIE)

Dated: March 13, 1990.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 90–24)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE FOR FEBRUARY 1990

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 90–4 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: Monday, February 19, 1990.

Australia dollar:

February 14, 1990	$0.745700

Switzerland franc:

February 5, 1990	$0.675584
February 6, 1990	.677094

FOREIGN CURRENCIES—Variances from quarterly rate for February 1990 (continued):

Switzerland franc (continued):

February 7, 1990	$0.674992
February 14, 1990	.670107
February 20, 1990	.673401
February 21, 1990	.678104
February 22, 1990	.679117
February 23, 1990	.677048
February 26, 1990	.672495
February 27, 1990	.674172
February 28, 1990	.670466

United Kingdom pound:

February 5, 1990	$1.695000
February 6, 1990	1.702000
February 7, 1990	1.699000
February 9, 1990	1.692500
February 12, 1990	1.695000
February 14, 1990	1.696000
February 15, 1990	1.693000
February 16, 1990	1.695500
February 20, 1990	1.704000
February 21, 1990	1.715000
February 22, 1990	1.714700
February 23, 1990	1.710000
February 26, 1990	1.693000
February 27, 1990	1.692000

(LIQ-03-01 S:NISD CIE)

Dated: March 13, 1990.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

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19 CFR Parts 142 and 178

(T.D. 90-25)

RIN 1515-AA88

MANUFACTURER/SELLER IDENTIFICATION REQUIRED AT TIME OF ENTRY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by requiring that importers provide the name and address of the manufacturer or seller of imported merchandise on each invoice. The ad-

dition of this information on the invoice is necessary to enhance Customs ability to perform its cargo documentation and improve the overall efforts to process entries as expeditiously as possible with a minimum of processing delays. Notice of Customs intent to require this information was announced in the Federal Register on November 13, 1989, and comments were sought on the proposal. Minor modifications have been made in the language of the amendment to eliminate the concerns and difficulties raised in comments. However, the basic information being sought in the final version remains the same as that in the proposal. Because the amendment requires submission of information to Customs, Part 178, the list of sections which contain approved collections of information is also being amended.

EFFECTIVE DATE: May 3, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Flynn, Office of Inspection and Control, U.S. Customs Service (202) 566–5354.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In recent years, the U.S. Customs Service has been increasing its use of automated information-processing technology in order to provide quicker, more efficient service to importers. A principal element of this effort has been the adoption of the Automated Commercial System (ACS). Through this system, importers are able to have their merchandise quickly cleared through the entry documentation process. One of the critical elements which enables the ACS process to function efficiently is an item known as the "Manufacturer ID" (MID code). This is a standardized code which is intended to provide a unique piece of data which can be used in various automated systems. Instructions for constructing this code element were provided to the public in T.D. 87–88, 52 FR 24034, June 26, 1987. Use of this MID code was required as of July 27, 1987, for all forms processed through the cargo selectivity module of the ACS.

When the MID code requirement was implemented, Customs had no record of many of the manufacturers for whom ID's were being developed and submitted. Additionally, "new" manufacturers whose identity cannot be readily verified appear constantly.

The Customs Service has established an automated system to process all formal entries and to select those shipments that are high risk for intensive examinations or scrutiny. At the present time, approximately 80 percent of all cargo shipments are released without an extensive Customs examination, or with only a review of the documentation. For ACS cargo selectivity entry processing to work efficiently, it is necessary that the system be able to verify the MID code against a known manufacturer's or seller's name and address. The MID code provided at entry must be verified if Customs is to be confident that the entry processing system and examination desig-

nations assigned shipments are proper. The address is absolutely necessary to determine and construct the unique identifier for the manufacturer or seller in ACS. Without this information, the usefulness of the Customs ACS history files will be lessened.

The ACS is currently faced with a large number of "pending MID's" (MID codes which have been filed with Customs, but which are not currently associated with a specific manufacturer or seller name and address) and incorrect MID codes. The efficient operation of the system is disrupted whenever it encounters one of these unvalidated MID codes.

Because Customs needs this information at the time of entry, an amendment to the Customs Regulations was proposed and published in the Federal Register on November 13, 1989 (54 FR 47219). The information being required by this amendment will be used to verify data provided at the time of entry filing to ensure that the data used in selecting shipments for examinations is valid. This amendment is intended to provide Customs with the information which will enable it to eliminate or greatly reduce the numbers of these unvalidated MID codes.

The information required by this amendment is not duplicated under existing Customs Regulations in any other phase of the entry processing system. Section 141.61 describes the manner in which entry documents and forms must be completed. Section 142.3 sets forth entry documentation requirements. Section 142.6(a) sets forth the required contents of the invoice to be submitted at the time of entry. Currently, the invoice must contain an adequate description of the merchandise, the quantity of the merchandise, the value of the merchandise and the appropriate tariff code. Information regarding the manufacturer/seller is not required on the invoice, but is optional. Section 141.86 sets forth the required contents of the invoice for submission with the entry summary. This summary must be filed no later than 10 days after the filing of the entry documentation. Again, the regulations provide the importer with the option of providing information on either the seller or the shipper of the merchandise, neither of which may be the actual manufacturer.

As originally proposed, § 142.6 would have been amended by adding a new paragraph (5) which read:

> (5) The name and complete address of the individual or firm who is responsible for invoicing the merchandise (for example, the manufacturer or the shipper).

Discussion of Comments

Customs received seven comments on the proposed amendment from members of the public. While none of the comments expressed vigorous opposition to the proposed amendment, several did raise questions which have resulted in minor modifications to the language of the amendment.

Comment:

Several comments expressed concern that importers would face significant difficulties if Customs adopted regulations which required that the manufacturer of imported merchandise be identified on the invoice. One instance cited where difficulties could arise would be when importers contract with foreign vendors for merchandise. The vendors might then sub-contract with a variety of manufacturers whose joint product would then be consolidated in the shipment. Another instance would be where merchandise was obtained from trading companies which deal in generic commodities; the identity of the actual manufacturer might be unavailable and unknown to the importer.

Response:

Although in the great majority of situations, the manufacturer will be the seller of the merchandise, Customs acknowledges that there will probably be instances where the actual identity of the true manufacturer of the merchandise cannot be ascertained. For this reason, the proposed amendment has been modified to allow the importer to supply Customs with the name and complete address of the individual or firm who sells the merchandise in those situations where the actual manufacturer cannot be identified. The information Customs needs is the identity of the foreign person or firm who is responsible for introducing the merchandise into the U.S. stream of commerce. This amendment is intended to satisfy that need.

Comment:

Some comments stated that the Supplementary Information in the Notice of Proposed Rulemaking did not provide the public sufficient information to justify the requirement that this additional information be provided on the invoice and that Customs has not established how receipt of this information will enable it to perform any of the regular Customs functions of classifying, appraising or determining admissability of merchandise.

Response:

Customs believes that the Background section of the Notice adequately reflected the need for the requirement. The Background section of this document more fully explains how receipt of the information required by this amendment will enable Customs to improve cargo handling for all importers. Enabling the ACS to operate at maximum efficiency is in the best interest of all importers, and the addition of this information will improve overall Customs operations.

Comment:

Some comments asked that the scope of the amendment be expanded to require that the name and address of both the seller and manufacturer of specific types of merchandise be included on the

invoice. Concerns were expressed over interrelationships between sellers and manufacturers of this product which might otherwise be overlooked by Customs.

Response:

Customs acknowledges that there are specific product categories which require more detailed information to assure full compliance with the law. Customs will continue to study the feasibility of implementing suggestions made in the comments. However, at this time, Customs is not prepared to expand the scope of the amendment to include additional information for particular products.

DETERMINATION

After consideration of all the comments received in response to the notice of proposed rulemaking, and upon further review of the matter, it has been determined to adopt the amendment with the modifications discussed.

PAPERWORK REDUCTION ACT

The collection of information in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0170.

The estimated average burden associated with this collection of information is 12 hours per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden and suggestions for reducing this burden should be directed to the U.S. Customs Service, Attention: Paperwork Management Office, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

EXECUTIVE ORDER 12291

This is not a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that these amendments will not have a significant impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 142
Customs duties and inspection, Imports.

19 CFR Part 178
Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

AMENDMENTS TO THE REGULATIONS

Parts 142 and 178 of the Customs Regulations (19 CFR Parts 142 and 178) are amended as set forth below:

PART 142—ENTRY PROCESS

1. The authority for Part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. In § 142.6, paragraph (a) introductory text is republished and a new paragraph (a)(5) is added to read as follows:

§ 142.6 Invoice requirements.

(a) *Contents.* The commercial invoice, or the documentation acceptable in place of a commercial invoice in those instances listed in § 141.83(d) of this chapter, shall be furnished with the entry and before release of the merchandise is authorized. The commercial invoice or other acceptable documentation shall contain:

* * * * * * *

(5) The name and complete address of the foreign individual or firm who is responsible for invoicing the merchandise, ordinarily the manufacturer/seller, but where the manufacturer is not the seller, the party who sold the merchandise for export to the U.S., or made the merchandise available for sale.

* * * * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control number
§ 142.6	Name and address of manufacturer or seller.	1515–0170

CAROL HALLETT,
Commissioner of Customs.

Approved: March 27, 1990.
PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, April 3, 1990 (55 FR 12342)]

(T.D. 90–26)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback rates issued February 8, 1988, to March 2, 1990, inclusive, pursuant to subparts A and B, Part 191, Customs Regulations.

In the synposes below are listed for each drawback rate approved under 19 U.S.C. 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was issued.

Dated: March 27, 1990.

DRA–1–09–CO:R:C:E
File: 222044

JERRY LADERBERG,
Acting Director,
Commercial Rulings Division.

(A) Company: BASF Corp.
Articles: Crude acrylic acid; technical acrylic acid; glacial acrylic acid; butyl acrylate; iso butyl acrylate; 2-ethyl hexyl acrylate; ethyl acrylate; methyl acrylate
Merchandise: Imported propylene oxidation catalyst; steatit spheres; ceramic inerts
Factory: Freeport, TX
Statement signed: June 5, 1989
Basis of claim: Used in
Rate issued by RC of Customs: New York, July 6, 1989

(B) Company: BASF Corp.
Articles: Formic acid, varying concentrations
Merchandise: Imported formic acid, 95% concentration
Factory: Freeport, TX
Statement signed: July 5, 1989
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, August 11, 1989

(C) Company: CIBA-GEIGY Corp.
Articles: CGH-154281 (Safaner); Metolachlor 90% pre-mix; Supracide 240EC; Ridomil 240EC
Merchandise: Imported ortho-nitrophenol; chloroacetone; metolachlor tech.; methidathion 50 S tech.; metalaxyl tech.
Factories: St. Garbriel, LA; McIntosh, AL
Statement signed: June 26, 1989
Basis of claim: Used in
Rate issued by RC of Customs: New York, October 19, 1989

(D) Company: Estron Chemical, Inc.
Articles: Sulfonex M–80
Merchandise: Imported ortho, para-toluenesulfonamide 30/70
Factory: Calvert City, KY
Statement signed: August 16, 1989
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, September 15, 1989

(E) Company: General Cigar Co., Inc.
Articles: Cigars and stemmed filler for cigars
Merchandise: Imported dark air cured tobacco leaves; scrap tobaccos (filler); cigar filler and wrapper tobaccos
Factories: Lancaster & Philipsburg, PA; Dothan, AL
Statement signed: March 10, 1989
Basis of claim: Used in
Rate issued by RC of Customs: New York, June 12, 1989

(F) Company: Hughes Aircraft Co.
Articles: Hughes air defense radars (HADR) and spares
Merchandise: Imported electro-mechanical parts and subassemblies
Factory: Fullerton, CA
Statement signed: January 25, 1989
Basis of claim: Appearing in
Rate issued by RC of Customs: Los Angeles, March 17, 1989

(G) Company: Knoll Pharmaceuticals, a unit of BASF K & F Corp.
Articles: Isoptin/verapamil tablets
Merchandise: Imported verapamil hydrochloride powder
Factory: Whippany, NJ
Statement signed: April 24, 1987
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, February 8, 1988

(H) Company: Mallinckrodt, Inc.
Articles: Hexabrix
Merchandise: Imported Ioxaglic acid
Factory: Raleigh, NC
Statement signed: August 10, 1989
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, August 21, 1989

(I) Company: Renk Corp.
Articles: Finished high precision bearing products
Merchandise: Imported high precision bearing parts
Factory: Duncan, SC
Statement signed: August 11, 1989
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, August 28, 1989

(J) Company: Standard Commercial Tobacco Co., Inc.
Articles: Cut rag tobacco
Merchandise: Imported flue cured and burley strip tobacco; flue cured and burley leaf tobacco; oriental leaf tobacco
Factory: Wilson, NC
Statement signed: January 30, 1990
Basis of claim: Used in
Rate issued by RC of Customs: New York, March 2, 1990

(K) Company: Tatung Company of America, Inc.
Articles: Color TV/monitor, model 2970 CPX
Merchandise: Imported television chassis
Factory: Long Beach, CA
Statement signed: November 8, 1988
Basis of claim: Appearing in
Rate issued by RC of Customs: Los Angeles, November 22, 1988

U.S. Customs Service

General Notice

DEFERRAL OF THE EFFECTIVE DATE OF A RULING REGARDING SINGLE BOARD COMPUTERS (MOTHERBOARDS)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: A Customs Service ruling issued on July 2, 1987 (file No. 554581), held that "stuffed" single board computers (motherboards) were properly classifiable as data processing machines rather than as parts of data processing machines. Because of a special duty rate in effect between April 17–November 9, 1987 as to such machines imported from Japan, duty thereon was increased from 3.9 percent ad valorem to 100 percent ad valorem. Some importers, noting detrimental reliance on prior Customs treatment of the merchandise, requested a delay in the effective date of the ruling. Based on the documentation/information submitted by two importers, it was determined that implementation of the ruling, for those importers, should be delayed for a period of 90 days from the date when each importer received notice that motherboards should be entered as unfinished data processing machines or the date of the subject ruling, whichever was earlier. This notice extends an opportunity to other importers, who can similarly show detrimental reliance on prior Customs treatment of their importation of motherboards, to obtain a delay in the implementation of the subject ruling on motherboards. A request for a similar delay will be available as to entries filed by other importers within 90 days of when each importer was first notified of the proper classification of motherboards or July 2, 1987, whichever is earlier, which remain unliquidated or, if liquidated, are within the protest period or are the subject of an open (unresolved) protest.

DATE: This notice is effective on March 29, 1990 and claims may be submitted pursuant thereto until June 27, 1990.

FOR FURTHER INFORMATION:

Legal Aspects: Arnold Sarasky, General Classification Branch, (202)–566–8181.

Operational Aspects: David Ballard, Selectivity Programs Branch, (202)–535–4138.

SUPPLEMENTARY INFORMATION:

Customs Ruling 554581 issued on July 2, 1987, held that stuffed printed circuit boards, meeting the criteria set forth in the ruling, which incorporate central processing units, were properly classifiable as data processing machines incorporating a calculating mechanism under item 676.15, Tariff Schedules of the United States (TSUS). It also held that the subject motherboards which did not incorporate a central processing unit and were not, in and of themselves, constituent units which functioned external to a main processor or processors, were classifiable as parts of automatic data processing machines and units therefore under items 676.52 or 676.54, TSUS. The ruling formalized Customs position which had previously been generally conveyed to importers in connection with pending entries.

Due to sanctions effective during the period April 17–November 9, 1987 as to data processing machines imported from Japan, the duty rate on single board computers went from 3.9 percent to 100 percent. Parts of data processing machines were free of duty.

Although there was no established and uniform practice for the classification of single board computers prior to the referenced ruling, some importers claimed that they had detrimentally relied on prior Customs treatment of such merchandise. The Department of the Treasury (Treasury) concluded, after review of the pertinent documents and information, that two importers acted reasonably and prudently in relying on Customs historic liquidation of motherboard entries for their respective accounts as parts of data processing machines. Therefore, applying the principles in section 177.9, Customs Regulations (19 CFR 177.9), as amended, 54 Fed. Reg. 31511 (July 31, 1989), Treasury granted a deferral to those importers in the implementation of the decision that motherboards were to be considered as unfinished data processing machines rather than parts thereof. Treasury also determined that it would be appropriate to extend this opportunity to other importers of motherboards. Thus, pursuant to this notice such importers will have an opportunity to establish that they also detrimentally relied on Customs historical treatment of motherboards as parts of data processing machines during the period from July 1985 through July 2, 1987.

Importers who can establish that they relied on Customs servicewide liquidations of motherboards entries under item 676.52 or 676.54, TSUS, as parts of data processing machines from July 1985 through July 2, 1987, may receive a delay of up to 90 days in the implementation of Customs Headquarters Ruling 554581. The deferral period for each importer, for whom deferral is approved, will commence on the date that the importer first received notice that the motherboards were classifiable as data processing machines under item 676.15, TSUS, or July 2, 1987, whichever is earlier. The deferral, if granted, will cover motherboards entered or released

under immediate delivery procedures during the deferral period. It will only apply to entries of such motherboards which remain unliquidated, are within the 90 days protest period or are subject to any open (unresolved) protest.

The deferral request should specify the entries covered by the request, the date of each entry, the entry liquidation status, the date the importer first received written notice of the change in classification, and the quantity of merchandise involved in the request. The request should also include the same information as to the liquidated entries, other than those included in the above-noted list of entries, relied on by the importer in filing motherboard entries under the provisions for parts of data processing machines. The importer requesting such deferral should, in addition to the above information, supply the following documents to confirm reliance on prior Customs treatment:

1. Copies of forms and other communications they received from Customs relative to the entries noted in their request, e.g. CF28–Request for Information, CF29–Notice of Action.
2. An affidavit in the format set forth at the end of this document.

Importers should submit their requests to the district office having jurisdiction over the port where the entry was filed. If multiple Customs districts are involved in a claim, those districts must be identified in a consolidated request and each district must receive a complete copy of the request for comment and transmittal to Customs Headquarters. Concurrent with the submittal of that request, the importer should advise Customs Headquarters by submittal of a copy of the request or a letter summarizing its request, identifying the districts to which it was submitted and the date of submittal. The copy of the request or the letter should be annotated "Motherboard Delay Request" and should be sent to:

United States Customs Service
Office of Regulations and Rulings
1301 Constitution Ave., NW., Room 2107
Washington, D.C. 20229

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: March 22, 1990.

PETER K. NUNEZ,
Assistant Secretary of the Treasury.

AFFIDAVIT

STATE OF _____

COUNTY OF _____

Before me this day personally appeared _____, who, being duly sworn, deposes and says:

(1) That I am (TITLE) of (COMPANY) at (ADDRESS) and have been employed by (COMPANY) for (NUMBER OF) years.

(2) That I have personal knowledge of our product line of "motherboards" defined as "a card containing a microprocessor which is the mainboard used in a (COMPANY) personal computer."

(3) That I personally have identified and compiled a list of all part numbers which were described as, or were thought to be, our imports of motherboards during the period July 1985 through July 2, 1987.

(4) That I am familiar with Customs liquidation of entries of such motherboards.

(5) That I personally directed a search of our consumption entry data base for July 1985 through July 2, 1987 and identified all liquidated and unliquidated entries of such motherboards.

(6) That each of the entries of such motherboards, which are listed in Attachment 1, was liquidated by Customs under item 676.52 or Item 676.54, Tariff Schedules of the United States, unless otherwise indicated.

(7) That each of the entries of such motherboards listed in Attachment 2 is unliquidated.

(8) That to the best of my knowledge and belief (COMPANY) first received written notification from Customs of its classification of such imports as unfinished data processing machines on or about (DATE). We understand that we are deemed to have received such notification no later than July 2, 1987.

_____

Affiant's signature

Subscribed and sworn to before me this _____ day of _____, 1990.

Notary Public

(STATE)

My commission expires the _____ day of _____ 199___.

[Published in the Federal Register, March 29, 1990 (55 FR 11715)]

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 111, 113, 142, 143, 159

PROPOSED CUSTOMS REGULATIONS REGARDING ELECTRONIC ENTRY FILING

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; correction; extension of comment period.

SUMMARY: A document was published in the Federal Register on January 25, 1990 (55 FR 2528), proposing, in pertinent part, to amend the Customs Regulations to provide that immediate delivery/entry and entry summary data on imported merchandise may be filed electronically with Customs through the Automated Broker Interface (ABI) module of the Customs Automated Commercial System (ACS). It would also provide general eligibility criteria for participation in the ABI system. This document corrects a typographical error that appears in that document relating to a proposed amendment to Part 111 regarding Customs brokers, and extends the period of time within which interested members of the public may submit comments concerning the proposed rulemaking.

DATE: Comments must be received on or before April 25, 1990.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, D.C. 20229. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations and Disclosure Law Branch, (202) 566–8237.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A document published in the Federal Register on January 25, 1990 (55 FR 2528) proposed, in pertinent part, to amend the Customs Regulations to provide that immediate delivery/entry and entry summary data on imported merchandise may be filed electronically with Customs through the Automated Broker Interface (ABI) module of the Customs Automated Commercial System (ACS). It would also provide general eligibility criteria for participation in the ABI system. The proposal reflects Customs significant advances in the automation of the entry filing process and its continuing commitment to increase the scope of electronic processing of imported merchandise and to reduce reliance on paper documentation, thereby resulting in lowered costs, increased efficiency and the expedited release of cargo.

Comments on the proposed rulemaking were to have been received on or before March 26, 1990. Customs has, however, received a request from a trade association to extend this period, the association stating that it needs additional time in order to coordinate a responsive comment with its membership. Customs believes, under the circumstances, that the request has merit. Accordingly, the period of time for the submission of comments is being extended as indicated.

Furthermore, a proposed amendment to Part 111 concerning Customs brokers as set forth in the document contained a typographical error.

CORRECTION

On page 2530 of the document, the proposed amendment to § 111.22(e) should read as follows:

§ 111.22 Additional record of transactions.

* * * * * * *

(e) *Authorization.* The regional commissioner for the region where a broker has given notification to maintain records of financial transactions on a centralized system basis, as set forth in § 111.23(e), is responsible for providing an exemption or withdrawal of exemption under paragraphs (b) and (c) of this section.

Dated: March 22, 1990.

CAROL HALLETT,
Commissioner of Customs.

[Published in the Federal Register, March 29, 1990 (55 FR 11611)]

U.S. Court of Appeals for the Federal Circuit

RHONE POULENC, INC. AND RHONE POULENC CHIMIE DE BASE, S.A. PLAINTIFFS-APPELLANTS *v.* UNITED STATES DEFENDANT-APPELLEE, PQ CORP., DEFENDANT-APPELLEE

Appeal No. 89–1395 and 89–1402

(Decided March 27, 1990)

James A. Geraghty, Donohue & Donohue, of New York, New York, argued for plaintiffs-appellants.

M. Martha Ries, Attorney, Commercial Litigation Branch, Department of Justice, of Washington, D.C., argued for defendant-appellee. With her on the brief were *Stuart E. Schiffer*, Acting Assistant Attorney General and *David M. Cohen*, Director. Also on the brief were *Stephen J. Powell*, Chief Counsel for Import Administration and *Pamela A. Green*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, Department of Commerce, of Washington, D.C., of counsel. *Steven R. Sosnov*, Sosnov & Associates, of Norristown, Pennsylvania, argued for defendant-appellee.

Appealed from: U.S. Court of International Trade.
Judge DICARLO.

Before RICH, NEWMAN and MICHEL, *Circuit Judges.*

RICH, *Circuit Judge.*

These consolidated appeals are from final judgments of the Court of International Trade, dismissing actions brought by importers of anhydrous sodium metasilicate (ASM) from France.[1] The importers challenged the final determinations of the Department of Commerce, International Trade Administration (ITA), in the 1984 and 1985 administrative reviews of the antidumping duty order covering French ASM. We affirm.

BACKGROUND[2]

Appellants Rhone Poulenc Chime de Base, S.A. and Rhone Poulenc, Inc. (collectively Rhone Poulenc) are the sole French producer and importer of ASM, a sodium silicate compound used in detergents, waste paper de-inking, and clay processing. In 1981, the ITA found that French ASM was being sold in the United States at

[1] *Rhone Poulenc, Inc.* v. *United States*, 710 F. Supp. 351 (CIT 1989); *Rhone Poulenc, Inc.* v. *United States*, 710 F. Supp. 348 (CIT 1989).

[2] Additional background on the parties and merchandise may be found in *Rhone Poulenc, S.A.* v. *United States*, 592 F. Supp. 1318 (CIT 1984) and *PQ Corp.* v. *United States*, 652 F. Supp. 724 (CIT 1987).

a less-than-fair-value (LTFV) sales margin of 60 percent, and the United States International Trade Commission found material injury to the domestic industry by reason of the imports. Accordingly, the ITA issued an antidumping duty order covering French ASM. *Anhydrous Sodium Metasilicate From France; Antidumping Duty Order,* 47 Fed. Reg. 1667 (1981). The order required the United States Customs Service (Customs) to collect cash deposits of estimated antidumping duties in the amount of 60 percent *ad valorem.*

During the first and second administrative reviews of the antidumping order (covering November, 1980 through December, 1981), the ITA determined that there had been no imports of ASM from France. 47 Fed. Reg. 15620 (1982); 47 Fed. Reg. 44595 (1982). During this period, Rhone Poulenc requested a reduction of the 60 percent cash deposit rate determined in the original investigation, claiming that economic conditions had changed. The ITA concluded that it was without power to adjust the margin without an importation during the period of review,and suggested that making an actual importation was the proper way to establish that conditions had changed. *See PO Corp* v. *United States,* 652 F. Supp. 724, 727 (CIT 1987).

Accordingly, Rhone Poulenc imported a single shipment of ASM during the following review period (1982). In the administrative review covering 1982 entries, the ITA determined that the sale was *bona fide* and at fair value. It ordered liquidation of the entry without any antidumping duty, and reduced the cash deposit rate to zero percent until publication of the final results of its next administrative review. 49 Fed. Reg. 43733 (1984).[3]

In 1983, as in 1982, Rhone Poulenc made one ASM sale to the United States. In its administrative review covering 1983, the ITA determined that this sale was also at fair value. 53 Fed. Reg. 4195 (1988).[4]

In 1984 and 1985, Rhone Poulenc made numerous imports of ASM into the United States. Pursuant to requests by PQ Corporation, a domestic producer of ASM, the ITA initiated its fifth and sixth administrative reviews of the antidumping duty order, covering 1984 and 1985 entries respectively. As before, the ITA sent Rhone Poulenc its standard antidumping duty questionnaires, requesting information on Rhone Poulenc's business organization and home market and United States sales.

To make a long story short, the present dispute was precipitated by Rhone Poulenc's responses to the ITA's 1984 and 1985 questionnaires. The ITA found the responses inadequate because they were submitted on paper rather than computer tape, and because sales dates, freight costs, and sales expenses were not stated in sufficient

[3]In *PO Corp* v. *United States,* 652 F. Supp. 724, 727 (CIT 1987), a domestic producer of ASM unsuccessfully challenged the ITA's decision.

[4]The 1983 and 1984 administrative reviews were combined by the agency. For convenience, we refer to them separately.

detail. 52 Fed. Reg. 28582 (1987) (1984 review); 52 Fed. Reg. 9320 (1987) (1985 review). In its preliminary results of the 1984 and 1985 administrative reviews, the ITA rejected Rhone Poulenc's questionnaire responses in their entirety, and stated that it was relying upon the "best information otherwise available"[5] to compute Rhone Poulenc's dumping margin, if any. As "best information" of Rhone Poulenc's current margins (1984 and 1985), the ITA stated its intention to revert to the 60 percent margin from the original LTFV investigation, which had been determined on the basis of sales made in 1980. *Id.;* 45 Fed. Reg. 77498 (1980). It then invited comments from interested parties.

Rhone Poulenc vigorously defended its questionnaire responses, insisting that they contained enough data to enable the ITA to ascertain every element necessary for a LTFV calculation, and were no less specific than those the ITA had accepted in the original LTFV investigation and earlier administrative reviews. It asserted that even if the responses were not 100% compliant, the ITA could not totally ignore them and resort to stale margins from the original LTFV investigation. Finally, it contended that the zero percent margins from the more recent administrative reviews were the "best information" of Rhone Poulenc's current margin. 53 Fed. Reg. 4195 (1988) (1984 review); 52 Fed. Reg. 33856 (1987) (1985 review).

The ITA responded as follows:

> *Comment 2:* Rhone Poulenc maintains that for any portions of its response which were deficient the Department should use data from the most recently completed administrative review covering 1982, or its submission for the 1983 period. In addition, it contends that under the *Freeport* rule, the Department must use the most recent information available in an antidumping proceeding. Therefore, if the Department determines that the 1985 response is inadequate, for this review it must use information from the 1982 or 1983 responses.
>
> *Department's Position:* The Department is properly using the margin from the [original] fair value investigation for this review as best information available due to our inability to get adequate cooperation from the respondent in submitting information. In conducting our reviews, we are dependent upon the cooperation of the respondent in supplying information for our analysis. Section 776 of the Tariff Act, which authorizes our use of the best information available in certain situations, is intended to encourage cooperation from parties in a proceeding. To use information from the previous two reviews, as respondent suggests, would, in effect, reward the respondent for his failure to provide adequate and timely responses during this review.

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[5]Determinations to be made on best information available

In making their determinations under this subtitle, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

19 U.S.C. § 1677e(c) (1988).

> Respondent's reliance upon *Freeport Minerals* v. *United States*, 776 F.2d 1029 (CAFC 1985), is misplaced. That case simply held that the Department must look at up-to-date information in deciding whether to revoke an antidumping duty order. The *Freeport* case is irrelevant to the issue here, which is what data should be used as best information available where a respondent has not provided adequate information. In such cases we are authorized to use information that may be adverse to the interests of a respondent.

52 Fed. Reg. at 33856.[6] The ITA ordered Customs to liquidate Rhone Poulenc's 1984 and 1985 entries with the 60 percent *ad valorem* antidumping duty. *Id.*

THE CIT DECISIONS

Rhone Poulenc unsuccessfully challenged the ITA's 1984 administrative review in the Court of International Trade (CIT). *Rhone Poulenc, Inc.* v. *United States*, 710 F. Supp. 341 (CIT 1989) (*Rhone I*). The CIT found that Rhone Poulenc's responses to the questionnaires had been deficient and that the ITA had properly relied upon the "best information" rule. The court rejected Rhone Poulenc's argument that our decision in *Freeport Minerals Co.* v. *United States*, 776 F.2d 1029 (Fed. Cir. 1985) required use of the most recent information, i.e., that from the 1982 and 1983 reviews, and held that, in any event, data from those reviews was unrepresentative because it was based upon so few sales. The court also rejected Rhone Poulenc's argument that the ITA could not automatically resort to the highest prior margin merely to penalize Rhone Poulenc for its deficient responses. *Id.* at 347. Finally, the CIT rejected Rhone Poulenc's argument that the ITA should have updated the 60 percent dumping margin to account for fluctuations in the interest rate and exchange rate of the French franc since 1980. The CIT rejected this argument because Rhone Poulenc had failed to raise it before the ITA. *Id.* at 348.

Rhone Poulenc also challenged the ITA's 1985 administrative review in the Court of International Trade, making basically the same arguments as it did in its challenge to the 1984 review. *Rhone Poulenc, Inc.* v. *United States*, 710 F. Supp. 348 (CIT 1989) (*Rhone II*). The CIT reached the same decision as it did in Rhone Poulenc's first action, applying the same reasoning and relying in part upon its prior opinion.

Rhone Poulenc appeals each of these decisions. Because of the interrelationship between the cases, the appeals have been consolidated.

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[6] Quoted here is the ITA's response in the 1985 review. The ITA's response in the 1984 review is similar. *See* 53 Fed. Reg. 4195 (1988).

OPINION

Rhone Poulenc no longer challenges the ITA's total rejection of its questionnaire responses for the 1984 and 1985 reviews. It raises a single issue for our review—whether the CIT erred as a matter of law in upholding the 60 percent margin from the original LTFV investigation as the "best information" of Rhone Poulenc's 1984 and 1985 margins.

1. *Standard of Review*

Administrative determinations under 19 U.S.C. § 1675(a)(1)(B) (1984), such as here, shall be sustained unless they are unsupported by substantial evidence on the record or are otherwise not in accordance with law. 19 U.S.C. § 1516a(b)(1)(B) (1982). *Cf. Matsushita Elec. Indus. Co., Ltd.* v. *United States*, 750 F.2d 927, 932 (Fed. Cir. 1984).

Rhone Poulenc asserts three reasons why the ITA's decision is unsupported by substantial evidence or otherwise not in accordance with law. First, it asserts that our decision in *Freeport Minerals* v. *United States*, 776 F.2d 1029 (Fed. Cir. 1985), compelled the ITA to use the most up-to-date sales information—the zero margin data underlying the 1982 and 1983 reviews—as the "best information" of 1984 and 1985 margins. Second, it asserts that the ITA cannot automatically resort to the highest prior margin merely to penalize Rhone Poulenc for its deficient responses. Third, it argues that even if the ITA could rely on the 60 percent margin from the 1980 entries, it was nevertheless required to update the data underlying that margin to account for changes in the interest rate and the exchange rate of the French franc since 1980. We address each of these arguments in turn.[7]

2. *Freeport Minerals*

Rhone Poulenc asserts that our decision in *Freeport Minerals* v. *United States*, 776 F.2d 1029 (Fed. Cir. 1985), compelled the ITA to use the most up-to-date sales information—the zero margin data underlying the 1982 and 1983 reviews—as the "best information" of 1984 and 1984 margins.

In *Freeport Minerals*, we held that the data upon which the ITA relied in determining whether to revoke an antidumping order must be current up to the date of publication of the preliminary determination. *Cf. UST, Inc.* v. *United States*, 831 F.2d 1028 (Fed. Cir. 1987). In that context, we stated:

> The House Report on the proposed Trade Agreements Act, like the Senate Report, emphasized the importance of using current information with respect to making determinations. "The Committee intends that the Authority and the ITC should

[7]In addition, Rhone Poulenc contends that the CIT's alternative ground for affirming the ITA's decision, that the 1982 and 1983 data were "unrepresentative," was a *post hoc* rationalization by agency counsel, not offered by the ITA as a justification for its decision, and therefore cannot be a basis for sustaining the agency's decision. *See Motor Vehicle Mfrs. Ass'n.* v. *State Farm Mut.*, 463 U.S. 29, 50 (1982). Since we affirm on the other ground stated by the CIT, we do not reach this argument.

> *always* use the most up-to-date information available." *Al Tech Specialty Steel Corp.*, 745 F.2d at 640; H.R. Rep. No. 317, 96th Cong., 1st Sess. 77 (1979).

776 F.2d at 1032. This passage, Rhone Poulenc points out, parallels House Report comments on the "best information" section of the statute, 19 U.S.C. § 1677e(c). The House Report states:

> [W]henever a party or any other person refuses or is unable to produce information in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Authority [ITA] and the ITC must use the best information available * * *. The Committee intends that the Authority and the ITC should always use the most up-to-date information available.

H.R. Rep. No. 317, 96th Cong., 1st Sess. 77 (1979). From this, Rhone Poulenc concludes "The thrust of the *Freeport Minerals* decision is that, in the words of the House Report, the most up-to-date information available is, by its nature, the best information available."

We disagree. Although we see no escape from our earlier reasoning that Congress desired the ITA always to use the most recent information in administrative reviews, it does not follow, as Rhone Poulenc suggests, that the ITA must *equate* "best information" with "most recent information." What is required is that the ITA obtain and *consider* the most recent information in its determination of what is best information.

We required no more of the ITA in *Freeport*. We remanded in that case for the agency to obtain the most recent information and consider it in its revocation decision. 776 F.2d at 1034. We did not require the agency to consider *only* the most recent information—as Rhone Poulenc would have us do here.

Here the 1982 and 1983 margins were clearly within the pool of information *considered* by the ITA in determining which data were the "best information" of Rhone Poulenc's current margins. Rhone Poulenc's true complaint is that, after considering the 1982 and 1983 margins, the agency found them not to be the "best information" for policy reasons which we discuss below.

3. *Best Information As A Penalty For Noncompliance*

Rhone Poulenc also alleges that the ITA sought out the *most punitive* information, rather than the *best* information. This, it says, is confirmed by the agency's practice of automatically resorting to the highest prior margin when an importer fails to answer its questionnaires.[8] In response to this argument, the agency cites dicta in *Atlantic Sugar Ltd.* v. *United States*, 744 F.2d 1556 (Fed. Cir. 1984), which it is said "explicitly sanctions the use of the best information available as a 'penalty' for noncooperation."

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[8] "[T]he margin chosen [should] be the highest available, even if that entails use of a margin from a prior period." Government Brief at 24, n. 10.

We need not and do not decide the difficult question of whether the agency may use the best information rule to "penalize" a party which submits deficient questionnaire responses. That is not what the agency did in this case. In order for the agency's application of the best information rule to be properly characterized as "punitive," the agency would have had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions. Here, the agency only *presumed* that the highest prior margin was the best information of current margins. Since Rhone Poulenc offered no evidence showing that recent margins were more probative of current conditions than the highest prior margin, the agency found the highest prior margin to be the best information otherwise available.

We believe a permissible interpretation[9] of the best information statute allows the agency to make such a presumption and that the presumption is not "punitive." Rather, it reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced *current* information showing the margin to be less. The agency's approach fairly places the burden of production on the importer, which has in its possession the information capable of rebutting the agency's inference. Moreover, the implementing regulations allow the ITA to take into account an importer's deficient response in determining what is "best information." *See* 19 C.F.R. § 353.51 (1988) ("Where a party * * * refuses to provide requested information, that fact may be taken into account in determining what is the best available information.").

The agency's presumption implements the basic purpose of the statute—determining current margins as accurately as possible. In addition, although Congress may not have intended it, the presumption effectively induces importers to comply with agency questionnaires, an important practical consideration since the ITA has no subpoena power. In this latter respect, the rule can be viewed as "an investigative tool, which that agency may wield as an informal club over recalcitrant parties or persons whose failure to cooperate may work against their best interest." *Atlantic Sugar,* 744 F.2d at 1560. However, since the presumption is rebuttable, it achieves this latter goal without sacrificing the basic purpose of the statute: determining current margins as accurately as possible.

4. *Adjustment of the 1980 Data*

Rhone Poulenc argues that even if the ITA could permissibly rely on the 60 percent margin from the 1980 entries, it was nevertheless required to update the data underlying that margin to account for changes in the interest rate and the exchange rate of the French

[9]Agency interpretations of statutes which they are charged with administering shall be sustained if permissible, unless Congress has directly spoken to the precise question at issue. *Chevron U.S.A.* v. *Natural Res. Def. Council,* 367 U.S. 837, 842–45 (1984).

franc since 1980. The CIT rejected this argument on the ground that Rhone Poulenc never asserted it before the ITA. 710 F. Supp. at 348; 710 F. Supp. at 350.

Rhone Poulenc concedes that it never raised this *argument* before the ITA, but contends it is simply another angle to an *issue* which it did raise before the ITA, whether the 1980 data were the best information. It argues that the Supreme Court's decision in *Hormel* v. *Helvering,* 312 U.S. 552 (1940), authorized appellate courts to consider new arguments so long as the general issue was raised at the agency level. We disagree. In *Hormel,* the court stated that "Ordinarily an appellate court does not give consideration to issues not raised below * * *. There may be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below." 312 U.S. at 556–57.

This is not such an exceptional case. The CIT found, and Rhone Poulenc does not dispute, that it did not raise the adjustment arguments before the ITA "for tactical reasons." 710 F. Supp. at 348; 710 F. Supp. at 350. Far from it being unjust to Rhone Poulenc, it would have been unjust to the ITA and wasteful of public resources to allow Rhone Poulenc to belatedly raise the argument under these circumstances.

5. *Other Issues*

We have considered the other arguments made by Rhone Poulenc, but find them unpersuasive.

CONCLUSION

The ITA's finding that the 60 percent margin from the fair value investigation was the "best information" on Rhone Poulenc's 1984 and 1985 dumping margins was supported by substantial evidence on the record and otherwise in accordance with law. Accordingly, the Court of International Trade did not err in upholding the ITA's determinations. The decisions of the Court of International Trade are

AFFIRMED.

INTEROCEAN CHEMICAL & MINERAL CORP., PLAINTIFF-APPELLANT *v.* UNITED STATES, DEFENDANT-APPELLEE

Appeal No. 89–1546

(Decided February 28, 1990)

Peter S. Herrick, of Miami, Florida, argued for plaintiff-appellant. With him on the brief was *Fred P. Bingham, II.*

Nancy M. Frieden, Department of Justice, of New York, New York, argued for defendant-appellee. With her on the brief were *Stuart M. Gerson*, Assistant Attorney General, *David M. Cohen*, Director and *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office.

Appealed from: U.S. Court of International Trade.
Judge MUSGRAVE.

Before MAYER and MICHEL, *Circuit Judges*, and BEER, *District Judge.**

PER CURIAM:

Interocean Chemical & Mineral Corporation appeals the judgment of the United States Court of International Trade affirming the United States Customs Service's classification of fully-cooked, frozen crabmeat under item 114.15, Tariff Schedules of the United States, rather than under item 114.25. *Interocean Chemical & Mineral Corp.* v. *United States*, 715 F. Supp. 1093 (Ct. Int'l Trade 1989). We affirm on the basis of the court's opinion which we adopt.

AFFIRMED

*Peter Beer, District Judge, United States District Court for the Eastern District of Louisiana, sitting by designation.

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Customs Bulletin and Decisions
Vol. 24, No. 15, April 11, 1990

U.S. Customs Service

Treasury Decisions

General Notice

Proposed Rulemaking

U.S. Court of Appeals for the Federal Circuit

*U.S. G.P.O. 1990-261-994:80090